



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Contract Management Services

File: B-240564

Date: December 3, 1990

James Wildoner for the protester.

Lucy T. Jackson, Department of Transportation, for the agency.
Amy M. Shimamura, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Procuring agency properly determined that the protester's initial proposal for services in support of the agency's review of grantees' procurement systems was unacceptable and not in the competitive range, where the protester's technical proposal indicated that proposed key personnel lacked sufficient procurement and procurement system review experience and the protester's proposed management plan essentially parroted the solicitation's statement of work.

DECISION

National Contract Management Services (NCMS) protests the rejection of its proposal, submitted in response to request for proposals (RFP) No. DTUM60-89-R-90012, issued by the Department of Transportation, Urban Mass Transportation Administration (UMTA), for services in support of the review of the procurement systems maintained by various UMTA grantees. NCMS contends that its proposal was improperly rejected as technically unacceptable.

We deny the protest in part and dismiss it in part.

The RFP contemplated the award of one to five cost-plus-fixed-fee task order contracts. The RFP's statement of work (SOW) specified that the contractor would be required to provide the personnel, facilities, materials, and equipment necessary to review specified UMTA grantee's procurement systems and to assist the grantee's in related procurement matters.

The RFP stated that award would be based on an evaluation of technical, cost/price, and business management factors listed in the RFP. The technical proposal was stated to be the most

important factor in the evaluation. The technical evaluation criteria were listed in their relative order of importance as follows:

- A. Personnel
 - 1. Key Personnel
 - 2. Other Resumed Personnel
- B. Technical Management Plan
- C. Experience with UMTA grantees.

The RFP required that the technical proposal clearly describe the offeror's capabilities, knowledge, and experience relating to the RFP's technical requirements, and demonstrate, in specific terms, an understanding of the technical requirements and the inherent problems associated with the technical objectives of the contract. The RFP warned that stating that the offeror understands and will comply with the technical requirements, or paraphrasing those requirements, is not adequate. The RFP had detailed proposal instructions for each technical evaluation factor as to what would be evaluated.

UMTA received 10 timely proposals by the closing date. NCMS, the lowest rated technical offeror, and one other offeror were found technically unacceptable, and excluded from the competitive range.

NCMS contends that UMTA's determination that it was technically unacceptable was arbitrary and capricious and that its proposal should be considered for award because its proposed personnel have over 72 cumulative years of procurement and contracting knowledge and experience. NCMS also contends that it should have been requested to clarify any areas of concern in its proposal.

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Rainbow Technology, Inc., B-232589, Jan. 24, 1989, 89-1 CPD ¶ 66. In reviewing an agency's evaluation, we will not reevaluate the technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP's evaluation criteria. Id.

UMTA has identified numerous technical weaknesses in NCMS' proposal which caused it to be considered technically unacceptable. For example, the agency states that the resumes of the key personnel proposed by NCMS indicated that they lacked actual hands-on procurement experience or knowledge and little demonstrated procurement system review experience. With regard to the protester's proposed management plan, the

agency states that the protester basically parroted the SOW and provided minimal additional information. In this regard, UMTA states that the plan does not provide information on the protester's approach to scheduling the work and work flow assignments, and the methods and procedures for recognizing, reporting, and resolving problems. The agency also found that NCMS' proposal indicates that the protester's experience with UMTA grantees is limited to budget and funding issues faced by the grantees, and evidences no procurement experience with the grantees.

NCMS contends, in response, that UMTA did not review its proposal very thoroughly because its proposed key personnel have performed procurement reviews and all other proposed personnel each have over 8 years of procurement and/or contracting knowledge and experience. Based on our review of the record, we find the agency reasonably found that the education, experience, and other qualifications discussed in the resumes of the protester's two proposed key personnel did not indicate that they could successfully accomplish the SOW requirements. Although the RFP advised offerors to clearly describe capabilities, knowledge, and experience relating to the RFP's technical requirements, e.g., specific procurement knowledge and procurement system review knowledge and skills, NCMS' resumes submitted for both proposed key personnel failed to do so. While the resumes do reflect some procurement experience, the resumes are full of generalities, and did not demonstrate how the proposed personnel's experience related to the RFP's requirements or that these personnel had the required procurement knowledge.

With respect to "other resumed personnel," the record generally indicates that some of the 14 proposed "other personnel" may have stronger procurement backgrounds than the proposed key personnel, although NCMS did not identify these personnel by name but only submitted general resumes of their education and experience. Moreover, the submitted resumes did not demonstrate the "analytical ability to rapidly assimilate information derived from file reviews and to form logical follow-up questions, conclusions and recommendations" or the "ability to conduct interviews," as required by the RFP. Most of the proposed personnel have experience either as contract administrators or contract specialists rather than experience in reviewing procurement systems.

Regarding the technical management plan, the record confirms the agency's conclusion that the protester's plan essentially parrots the SOW, does not specify how the work would be accomplished, or demonstrate the protester's understanding of the RFP's technical requirements. NCMS' contention that it did not have to be more specific, because this is a cost reimbursement contract, is belied by the RFP's specific

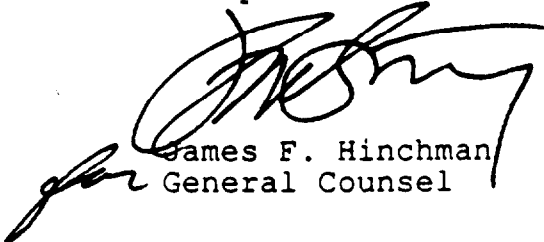
instructions that an offeror must demonstrate its capability and specific approach to work scheduling and organizing and performing each area of the SOW.

Finally, concerning the protester's "experience with UMTA grantees", NCMS' proposal states that one of its proposed key personnel has knowledge of the types of contracting problems faced by UMTA grantees from a budgeting standpoint. The agency states, and we agree, that NCMS' proposal contains no evidence of the protester having acquired experience which would have provided it with an understanding or knowledge of the procurement problems faced by UMTA grantees.

Based on the foregoing, we find that the agency reasonably found NCMS' lowest rated proposal technically unacceptable. NCMS nevertheless contends that UMTA's failure to include its proposal in the competitive range and conduct discussions with it violates federal procurement regulations. We do not agree. A procuring agency is not required to include an offeror's technically unacceptable initial proposal in the competitive range and permit revisions where the deficiencies are so material that major revisions would be required to make the proposal acceptable. See S.T. Research Corp., B-232264, Nov. 3, 1988, 88-2 CPD ¶ 435. In this case, we concur with the agency that only major revisions could make NCMS' proposal technically acceptable. While NCMS states that its price should have been considered in making the determination to eliminate it from the competitive range, a technically unacceptable proposal can be eliminated from the competitive range irrespective of its price. Id.

In its comments on the agency's report, NCMS contends, for the first time, that the solicitation contains a faulty SOW and invalid evaluation criteria. These protest contentions of alleged improprieties in the solicitation, which were apparent prior to the closing date for receipt of proposals, were required to be protested by the closing date for receipt of proposals to be considered timely under our Bid Protest Regulations. 4 C.F.R. § 21.1(a)(1) (1990). Therefore, these contentions are dismissed as untimely.

The protest is denied in part and dismissed in part.


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General Counsel